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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,740	12/03/2003	Melvin Carvell	C4264(C)	5834

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EXAMINER	
BOYER, CHARLES I	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/726,740	CARVELL ET AL.	
	Examiner	Art Unit	
	Charles I. Boyer	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to applicants' amendment and response received February 6, 2006. Claims 1-54 are currently pending.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-54 are provisionally rejected under the judicially created doctrine of double patenting over claims 1 and 3-37 of copending Application No. 10/726,823. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The present application claims a silicone, perfume, and deposition aid. The copending application claims a

silicone, a viscosity modifying agent which may be a perfume, and the identical deposition aid.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al, WO 00/18861.

Clark et al teach a treatment method for fabrics utilizing a deposition aid having a polysaccharide polymeric backbone and a benefit agent moiety attached thereto. The benefit agent moiety undergoes a chemical change such that the affinity of the material onto the fabric is increased (see abstract). Suitable benefit agent moieties of the invention include silicones (page 14, lines 24-25). Additional preferred components of these fabric care compositions include fabric softeners, such as silicones, as well as perfumes (page 15, lines 4-10). An example of such a composition is an aqueous

laundry detergent comprising a nonionic surfactant, a deposition aid polymer, and the balance water (page 45, example 7).

The reference does not specifically teach the combination of a deposition polymer, silicone, and a perfume. As all of these components however, are either essential or preferred in the laundry treatment compositions of the invention, it would have been obvious to one of ordinary skill in the art to combine these components with a reasonable expectation of successfully obtaining a fabric treatment composition.

Applicants have traversed this rejection on the grounds that the reference does not teach a silicone having a perfume dissolved or dispersed therein.

The examiner maintains that as it is obvious to form a fabric care composition containing the same components as the presently claimed invention, that is, a silicone, perfume, and deposition aid, the claim limitations are satisfied.

5. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter et al, US 6,939,842.

Hunter et al teach a laundry treatment composition comprising a silicone and a substituted polysaccharide (see abstract). An example of such a composition is an emulsion comprising nonionic surfactant, polydimethylsiloxane, and silicone substituted polysaccharide (col. 27, example 1). Another example is an emulsion comprising nonionic surfactant, aminosilicone, and silicone substituted polysaccharide (col. 27, example 1). Note that the silicones of the invention comprise polydialkyl siloxanes, amino siloxanes, and mixtures thereof (col. 34, claim 10).

Hunter et al do not specifically teach a perfume, nor do they teach the combination of a deposition polymer, silicone, and a perfume. As perfumes are ubiquitous in laundry detergents for providing a pleasing fragrance, the examiner maintains that one of ordinary skill in the art would provide a perfume in the final form of the laundry treatment compositions of the invention and so render obvious the presently claimed composition.

Applicants have traversed this rejection on the grounds that there is no disclosure or suggestion in the prior art towards dissolving or dispersing the perfume in the silicone oil. The examiner acknowledges there is no specific teaching of a perfume in the reference, however, as perfumes are such common ingredients in detergents, their incorporation is not an unobvious difference over the prior art. Only on rare occasions, when an unscented detergent is desired by consumers, will a perfume or fragrance be omitted from a laundry detergent. The examiner maintains therefore, that the detergent of Hunter et al, when packaged in its final form, will almost certainly contain a fragrance and so satisfy the claim limitations at hand.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571 272 1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles I Boyer
Primary Examiner
Art Unit 1751